

REMARKS

Claims 1-38 are pending in the present application.

The Examiner has required election in the present application between:

Group I, claims 1-33, 37, and 38, drawn to optical receiver/transmitters using a variable optical attenuator; and

Group II, claims 34-36, drawn to a method of producing a variable optical attenuator.

For the purpose of examination of the present application, Applicants elect, with traverse, Group I, Claims 1-33, 37, and 38. In a telephone call with the examiner, the restriction requirement was clarified to include claims 37 and 38, which were not originally listed in the restriction requirement.

Applicants respectfully note that the previous office action dated October 17, 2006 had initially rejected claims 1, 3, 6, 37, and 38, objected to claims 2, 4, 5, and 7-33, and indicated claims 34-36 as being allowed. In response to the office action, Applicants traversed the rejection of claims 1, 3, 6, 37, and 38, and rewrote the objected to claims 2, 4, 5, and 7-33 such that they included the allowed subject matter.

Therefore, prior to the Examiner's late restriction requirement, claims 2, 4, 5, and 7-36 were placed in condition for allowance or were already allowable. Therefore it is unclear to Applicants why the U.S. Patent and Trademark Office is making a restriction requirement at this point in the prosecution. According to M.P.E.P. § 803, “[i]f the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent and distinct inventions.” The Examiner has failed to establish how examination of claims 1, 3, 6, 37, and 38 creates a serious burden.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Chad D. Wells, Registration No 50,875 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Application No.: 10/718,806

Docket No.: 0630-1870P

Reply filed May 3, 2007

Restriction Requirement dated April 6, 2007

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: May 3, 2007

Respectfully submitted,

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